

Maine Debt Collection Laws

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I. Statute of Limitations

In accordance with the Uniform Commercial Code as adopted in Maine, the statute of limitations for contract actions which involve the sale of goods or personal property leases is four years from the date of the breach of the contract or lease. [11 M.R.S. § 2-725](#); [11 M.R.S. § 2-1506](#). This includes actions on open account for goods sold and delivered and installment purchase agreements for vehicles. However, by agreement, the parties to such contracts can reduce the statute of limitations to as little as one year. [11 M.R.S. § 2-725](#); [11 M.R.S. § 2-1506](#).

For contracts not involving the sale of goods that are signed under seal and for promissory notes signed before an attesting witness, the statute of limitations is twenty years. [14 M.R.S. § 751](#).

For mutual and open accounts, the cause of action accrues at the time of the last item proved on the account. [14 M.R.S. § 852](#). In some cases, a payment made by a debtor on a contractual debt may toll or extend the running of the statute of limitations. *Reed v. Harris*, 139 Me. 225, 28 A.2d 741, 742 (1942).

Domestic and foreign judgments are presumed to be paid after twenty years, but this presumption of payment can be overcome by clear and convincing evidence. [14 M.R.S. § 864](#); *Jackson v. Nason*, 38 Me. 85 (1854).

The statute of limitations for all other contract actions, such as claims based on services rendered or sums due on a credit card account, is six years. [14 M.R.S. § 752](#).

II. Civil Liability for Bad Checks

The holder of a dishonored check can recover damages in excess of the face amount of the check, if the person liable for the dishonored check fails to pay the face amount of the check, plus bank fees and mailing costs, within 10 days of receiving a statutorily prescribed notice from the holder of the check. [14 M.R.S. § 6071](#). The damages recoverable in addition to the face amount of the check include court costs, processing charges incurred by the holder, and interest at the rate of 12% per annum from the date of dishonor. Further, if the check and additional charges are not paid prior to the court hearing on the dishonored check, the holder can recover reasonable attorney's fees and the court may assess a civil penalty not to exceed \$150.00.

The statutorily prescribed notice is as follows:

"Your check, draft or order made payable to in the amount of has not been accepted for payment by, which is the drawee bank designated on your check. The check is dated and it is numbered"

You are CAUTIONED that unless you pay the amount of this check within 10 days after the date this letter is postmarked, you may have to pay the following additional costs:

1. Attorney's fees;
2. Service costs;
3. Processing charges;
4. Interest; and
5. A penalty not to exceed \$150.

You are advised to make payment to at the following address**

[14 M.R.S. § 6073](#).

A person who intentionally issues or negotiates a second dishonored check to the same payee within one year of the first dishonored check is liable for additional damages of up to twice the amount of the check, not to exceed \$750.00 for checks drawn on closed accounts and \$400.00 for checks returned for insufficient funds. [14 M.R.S. § 6071\(5\)](#).

III. Garnishment and Property Exemptions

Wage garnishment is an available means of enforcing a judgment only in connection with a post-judgment disclosure proceeding, as follows: (1) If the judgment debtor fails to appear for a disclosure proceeding after being duly served with the disclosure subpoena; or (2) if the debtor fails to make two or more court ordered payments pursuant to an order entered in a disclosure proceeding. [14 M.R.S. § 3127-B](#).

When the judgment is based on a consumer credit transaction as defined by Maine's Consumer Credit Code, [9-A M.R.S. §§ 1-101 to 13-120](#), the maximum amount subject to garnishment is as follows:

The maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of:

- A. Twenty-five percent of the individual's disposable earnings for that week; and
- B. The amount by which the individual's disposable earnings for that week exceed 40 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 United States Code, Section 206(a)(1), or the State minimum wage prescribed by Title 26, section 664, whichever is higher, in effect at the time the earnings are payable.

In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the minimum hourly wage equivalent in effect to that set forth in this paragraph. [9-A M.R.S. § 5-105](#).

If the judgment does not arise out of a consumer credit transaction, then maximum amount subject to garnishment is as follows:

In the case of a judgment debtor who is an individual, the maximum amount of earnings for any workweek that is subject to an installment order may not exceed the least of:

- A. Twenty-five percent of the sum of the judgment debtor's disposable earnings and exempt income for that week;
- B. The amount by which the sum of disposable earnings and exempt income for that week exceeds 40 times the minimum hourly wage prescribed by 29 United States Code, Section 206(a)(1); or
- C. The total amount of disposable earnings. [14 M.R.S. § 3126-A](#).

Certain income sources are wholly or partially exempt from attachment, as follows:

- A. A Social Security benefit, unemployment compensation or a Federal, state or local public assistance benefit, including, but not limited to, the Federal Earned Income Tax credit and additional child tax credit;
- B. A veterans' benefit;
- C. A disability, illness or unemployment benefit;
- D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
- E. A payment or account under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:
 - (1) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;
 - (2) The payment is on account of age or length of service; and
 - (3) The plan or contract does not qualify under the United States Internal Revenue Code of 1954, Section 401(a), 403(a), 403(b), 408 or 409; or
- F. A payment or account under an individual retirement account or similar plan or contract on account of illness, disability, death, age or length of service to the sum of \$15,000 or to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, whichever is greater.

The most significant property exemption provided for by Maine law is the Homestead exemption. The Homestead exemption applies to the debtor's aggregate interest, not to exceed \$47,500 in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor. If the debtor or a dependent of the debtor is either a person 60 years of age or older or a person physically or mentally disabled and because of such disability is unable to engage in substantial gainful employment and whose disability has lasted or can be expected to last for at least 12 months or can be expected to result in death, then the Homestead exemption is \$95,000.00. For jointly owned properties, the maximum exemption is two times the applicable exemption. [14 M.R.S. § 4422\(1\)](#).

Less significant but notable property exemptions are as follows: the debtor's interest in a motor vehicle not to exceed \$5,000.00; the debtor's aggregate interest, not to exceed \$750 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor and the

debtor's interest in a wedding ring and an engagement ring; the debtor's aggregate interest, not to exceed \$5,000 in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor, including, but not limited to, power tools, materials and stock designed and procured by the debtor and necessary for carrying on the debtor's trade or business and intended to be used or wrought in that trade or business; the debtor's interest in one of every type of farm implement reasonably necessary for the debtor to raise and harvest agricultural products commercially, including any personal property incidental to its maintenance and operation; the debtor's interest in one boat, not exceeding 5 tons burden, used by the debtor primarily for commercial fishing; the debtor's interest in one of every type of professional logging implement reasonably necessary for the debtor to harvest and haul wood commercially, including any personal property incidental to its maintenance and operation; and any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract. A few other minor exemptions also apply. [14 M.R.S. § 4422](#).

IV. Licensing

Lenders and creditors who engage in consumer credit transactions involving Maine residents must be licensed by the Maine Bureau of Consumer Credit Protection. [9-A M.R.S. § 6-201](#) and [§ 2-302](#). As defined in Maine's Consumer Credit Code, a consumer credit transaction means a consumer credit sale, consumer lease or consumer loan or a modification thereof including a refinancing, consolidation or deferral. [9-A M.R.S. § 1-301\(12\)](#). A consumer credit sale, lease or loan must be primarily for a personal, family or household purpose. Lenders and creditors who do not meet a statutorily prescribed minimum number of transactions per year are exempt from licensing. [9-A M.R.S. § 1-301\(17\)](#). The Maine Bureau of Consumer Credit Protection issues licenses by type of creditor, including but not limited to check cashers, rent-to-own companies, payday lenders, supervised lenders and litigation funding providers. Licensees must post a bond which varies in amount depending upon the nature of the license and volume of business in the State of Maine. Commercial lenders and creditors are not required to be licensed by the Maine Bureau of Consumer Credit Protection.

Debt collectors who seek to enforce consumer debts in the State of Maine must be licensed by the Maine Bureau of Consumer Credit Protection. [32 M.R.S. § 11031](#). The debt must be one incurred primarily for a personal, family or household purpose including child support obligations and returned checks. [32 M.R.S. § 11002\(5\)](#). A debt collector is one whose principal purpose or activity is the direct or indirect collection of debts owed to another. Although creditors who attempt to collect debts owed to them are generally not included in the definition of debt collector, any creditor who uses a name other than the creditor's name in attempting to collect a debt will be included in the definition. Persons who regularly engage in the enforcement of security interests are also included in the definition of debt collectors. [32 M.R.S. §](#)

[11002\(5\)](#). Debt collectors must post a bond with the Maine Bureau of Consumer Credit Protection in order to be licensed.

Attorneys at law whose principal activities include collecting consumer debts on behalf of clients and who are not licensed to practice law in the State of Maine are subject to the same licensing and bonding requirements as non-attorney debt collectors. [32 M.R.S. § 11002\(6\)](#).

V. Collection Practices

Commercial Collections: Maine has no usury law limiting interest charges in commercial transactions. However, late charges or other liquidated damages must be reasonable in amount. Liquidated damages will be allowed if the liquidated damages reflect the anticipated or actual loss caused by the default and are not usurious or excessive so as to constitute a penalty. [Raisin Memorial Trust v. Casey, 2008 ME 63](#).

Consumer Collections: Prejudgment attachment, including attachment on trustee process, is not available for any claim that falls within the scope of the Maine Consumer Credit Code, which governs consumer credit transactions including a consumer credit sale, consumer lease or consumer loan. [9-A M.R.S. § 5-104](#).

In both commercial and consumer collection cases, wage garnishment is not available directly on a judgment. Wage garnishment is only available when a debtor fails to appear in court in response to a post-judgment disclosure subpoena or fails to make two or more court-ordered payments entered in a disclosure action. [14 M.R.S. § 3127-B](#).

Secured Collections: A mortgagor seeking to foreclose on a residential mortgage, when the mortgagor is occupying all or a portion of the property as the mortgagor's primary residence and the mortgage secures a loan for personal, family or household use, must first send the mortgagor and any cosigners a 35 day notice of right to cure. [14 M.R.S. § 6111](#). The contents of the notice are detailed in the statute and must be strictly complied with. Also in connection with residential mortgage foreclosures, where the property being foreclosed is an owner-occupied residential real property of no more than 4 units that is the primary residence of the owner-occupant, then the foreclosure action is subject to a foreclosure diversion program, which requires the parties to submit to mediation if the mortgagor requests mediation. [14 M.R.S. § 6321-A](#).

With respect to consumer credit transactions, before a creditor can accelerate the maturity of the debt or repossess collateral for the debt, Maine's Consumer Credit Code requires that a right to cure notice be sent to a debtor who has been in default for 10 days for failure to make a required payment, and when the

collateral has not been voluntarily surrendered. [9-A M.R.S. § 5-111](#). The contents of the notice and the method of delivery of the notice are spelled out in the statute. 9-A M.R.S. § 5-110. Only one notice or right to cure is required in any twelve month period. [9-A M.R.S. § 5-111\(2\)](#).

VI. Court Costs

Maine has two levels of trial courts: Superior Courts and District Courts. In relation to contract claims, both courts have concurrent jurisdiction over non-small claims matters, so contract claims may be prosecuted in either court. However, most contract claims are brought in the District Courts of the State primarily because of their geographical location (there are only 16 Superior Court locations versus 29 District Court locations), the number of judges available to handle District Court cases (36 District Court judges versus 22 Superior Court justices), and because the District Court handles all small claims cases. Small claims cases are those where the amount sought to be recovered is \$6,000.00 or less. [14 M.R.S. § 7482](#).

Whether contract cases are filed in the Superior or District Courts, the following fees apply ([Administrative Order JB-05-26 \(A. 06-12\)](#)):

(a) Prejudgment: In non-small claims cases, the initial entry fee for a Complaint is \$150.00. The fee for filing a small claims action is \$50.00. In mortgage foreclosure actions, the plaintiff must also pay at the time of filing the Complaint a mediation fee in the amount of \$200.00. The fee for a summons is \$5.00. If a party files a motion to dismiss for failure to state a cause of action, a motion for judgment on the pleadings, a motion for summary judgment, or a motion for default judgment where the amount sought is \$10,000.00 or more, then there is a filing fee of \$200.00. If the case is brought in the Superior Court and either party demands a jury trial, then that party must pay a \$300.00 jury trial fee. The fee for obtaining a writ of execution once judgment is entered is \$25.00.

(b) Post-judgment: The fee for entry of a small claims post-judgment disclosure action is \$15.00. In non-small claims cases, the entry fee for a disclosure action is \$60.00 and the fee for a post-judgment disclosure subpoena is \$5.00.

VII. Service of Process

In both small claims cases and non-small claims cases, civil process can be served by mail, provided the defendant returns to the plaintiff's attorney a signed acceptance of service form within 20 days of receiving process by mail. [M. R. Civ. P. 4\(c\)\(1\)](#). Since most defendants do not cooperate in returning the acceptance form, most civil process is served in hand. [M. R. Civ. P. 4\(c\)\(2\)](#). When service is made in hand, the process must be served by a sheriff, constable or a person specially appointed by a court to

serve process. Constables are only authorized to serve process in his/her own town and are required to post a bond with the town in which service is to be made. Hence, there are few constables authorized to serve process in Maine. Maine courts seldom specially appoint a person to effectuate service. Therefore, almost all civil process is served by the sheriffs within their respective counties.

In small claims cases, service of process for plaintiffs who file 3 or more small claims actions in a calendar month must make service of the statement of claim on each defendant. Any of the following methods of service may be used:

- (1) By mailing a copy of the statement of claim, first class, postage prepaid, to the person to be served, together with two acknowledgment forms provided by the court and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender within 20 days after the date of mailing, service may be made by another method provided herein. Service by this method is complete when the acknowledgment is signed by the defendant, provided that acknowledgment is returned to the sender.
- (2) By mailing a copy of the statement of claim, first class, postage prepaid, registered or certified, restricted delivery, return receipt requested, to the person to be served. Service by this method is complete when the registered or certified mail is delivered and the receipt is signed by the person to be served, provided that the receipt is returned to the sender.
- (3) By service of the statement of claim upon the person to be served by the sheriff or deputy or other person authorized by law or specially appointed by the court to serve process. [M.R.S.C.P. 4](#)

When process is served by a sheriff or constable, the sheriff or constable is entitled to receive a fee in the amount of \$16.00. [30-A M.R.S. § 421](#). The sheriff or constable is also entitled to mileage for travel to and from the place of service. If the sheriff or constable is unable to locate the defendant for service, then the charge is \$10.00 plus mileage. Additional charges may be added by some process servers, such as postage and administrative fees.

The process fees noted above apply to most forms of process including summonses, disclosure subpoenas, witness subpoenas and garnishment orders.

VIII. Significant Cases Brought by Attorney General Related to Debt Collection

Enforcement of Maine's laws and regulations governing debt collectors falls within the jurisdiction of the Maine Bureau of Consumer Credit Protection. The Bureau uses administrative process to enforce debt regulations. A list of recent enforcement actions can be found on the Bureau's website, as follows: <http://www.maine.gov/pfr/consumercredit/enforcement.shtml>. For this reason, the office of Maine's Attorney General has not been involved in any significant debt collection cases.

IX. Significant Recent Cases Involving Creditors

Since the effective date of the foreclosure diversion program in 2010 and the related amendment of Maine's notice of right to cure statute for residential mortgage foreclosures, the Maine Supreme Judicial Court, Maine's highest appellate court, has ruled on a number of foreclosure-related cases. In a significant decision involving standing to bring a foreclosure action, the Supreme Judicial Court held that the Mortgage Electronic Registration Systems, Inc. (commonly referred to as MERS) did not have standing to institute a judicial foreclosure action in Maine despite the fact that MERS was the record holder of the mortgage being foreclosed. MERS lacked standing because MERS held only bare legal title to the mortgage as a nominee for the holder of the underlying debt secured by the mortgage. [Mortgage Electronic Registration Systems, Inc. v. Saunders, 2010 ME 79, 2 A.3d 289](#). The following year, the Supreme Judicial Court upheld a foreclosure judgment in favor of a mortgagee, where the mortgagee owned the underlying note but not the mortgage that secured it at the time the foreclosure action was commenced. The court found that the mortgagee's acquisition of the mortgage during the pendency of the foreclosure action was sufficient to give the mortgagee proper standing to prosecute the action to judgment. [JPMorgan Chase Bank v. Harp, 2011 ME 5, 10 A.3d 718](#). In the aftermath of these decisions, Maine's trial courts have had to resolve many contested cases involving the ownership and standing of foreclosing mortgagees.

Regarding assigned debts, the Maine Supreme Judicial Court issued a decision in 2011 regarding the documentation required to prove an assigned debt case. In the case of [CACH, LLC v. Kulas, 2011 ME 70, 21 A.3d 1015](#), the court held that an affidavit from the original credit grantor on a credit card debt stating that the credit card account had been sold and assigned to CACH, LLC was insufficient to establish CACH's ownership of the account. The affidavit in question failed to have attached to it sworn or certified copies of the actual assignment documents. In addition, the *CACH* court also held that a separate affidavit executed by a CACH, LLC employee that alleged the amount due on the account was defective, because the original credit card agreement was destroyed, and therefore there was no evidence of the terms, conditions, and interest rates associated with debtor's account. [2011 ME 70, 21 A.3d 1015, 1019](#).

In another assigned credit card debt case, the Maine Supreme Judicial Court further elaborated on the documentation required to prove an assigned debt case. In the case of [Arrow Financial Services, LLC v. Guiliani, 2011 ME 135, 32 A.3d 1055](#), the court held that a bill of sale attached to an affidavit of an employee of the plaintiff was insufficient to prove ownership of the account, because the bill of sale referenced an account schedule that was not attached. In addition, as in the *CACH* case, the plaintiff did not submit the original contract between the original creditor and the debtor. Lastly, the *Arrow Financial*

court held that the plaintiff did not properly prove the amount due on the account, because it provided no records showing a breakdown of the principal, interest and other charges due on the account, and it did not provide a schedule of payments made on the account.

In a case involving the sufficiency of a business records affidavit to prove default by the borrower on an assigned promissory note and mortgage, the Maine Supreme Judicial Court ruled that the affidavit of the current holder of the note and mortgage was inherently untrustworthy and therefore did not meet the requirements of the business records exception to the hearsay rule. [HSBC Mortg. Services, Inc. v. Murphy, 2011 ME 59, 19 A.3d 815](#). The HSBC case has a detailed discussion of the sufficiency of the contents of an affidavit by the current holder of a debt to prove transactions that occurred prior to the assignment of the debt.

X. Ethics Opinions from the State Supreme Court Regarding Debt Collection.

No cases found.

Please be advised that this paper is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

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